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Fiftieth session

SUMMARY RECORD OF THE 1312th MEETING

Held at Headquarters, New York,
on Tuesday, 5 April 1994, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of El Salvador (continued) (CCPR/C/51/Add.8)

1. At the invitation of the Chairman, Mr. Melendez and Ms. Villalta (El Salvador) took places at the Committee table.

Right to life, liberty and security of the person and treatment of prisoners and other detainees (arts. 6, 7, 9 and 10 of the Covenant) (sect. II of the list of issues) (continued)

2. Mr. MELENDEZ (El Salvador), replying to earlier questions, said that the process of dismissing from the armed forces all officers who had been implicated in human rights offences had now been virtually completed in accordance with the Peace Agreement.

3. The question had also been raised as to what would happen when ONUSAL left El Salvador and, in particular, how the observance of human rights would be monitored in the future. It was anticipated that ONUSAL would continue its work in some form after the elections, and would therefore be involved to some extent in human rights monitoring. However, the Government had also given undertakings in that regard in the context of the Mexico Agreements. The Procurator for the Protection of Human Rights would be largely responsible for monitoring human rights, together with the Salvadorian Human Rights Commission and an independent expert.

4. On the question of assassinations, the disappearance of individuals and the operation of the death squads, he said that, during the 12 years of the war that had now ended, much that went on in the country had been largely outside the control of the State. However, the Mexico Agreements had established mechanisms, including the Commission on the Truth, for investigating incidents arising from the armed conflict and for determining where the responsibility lay. The Commission's mandate had been to investigate serious violations of human rights from 1980 onwards, committed both by the armed forces and by the insurgents. The Commission itself had admitted that cases were too numerous for them all to be investigated and the Government of El Salvador shared that view. The Commission had identified a number of cases of particular gravity which had implications of international, rather than purely national, significance and the Government considered that, as a matter of practicality, it should concentrate on those cases.

5. With regard to the punishment of those assumed to be responsible, the Commission on the Truth had recognized that no investigation as to responsibility had been possible while the armed conflict continued, and that to punish those guilty of all the crimes committed during the war would not promote the process of reconciliation but, on the contrary, would be likely further to polarize Salvadorian society and therefore to be counterproductive. The Government agreed with that point of view. It should be appreciated that El Salvador was now in a transitional period that was in many ways as difficult as the period of armed conflict.

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6. The changes that had been made in the armed forces had been both quantitative and qualitative in nature. In the first place, the armed forces had been reduced by over 50 per cent. Secondly, they now accepted their subordination to the civilian authority and fulfilled their constitutional duties, in particular the defence of national sovereignty. Thirdly, the special battalions which had committed numerous human rights abuses had been dissolved. Those measures would radically alter the old structures, which had created internal security threats. The new National Civilian Police would assume its due role in ensuring public security within the country.

7. As for illegal groups, the Commission set up within El Salvador was currently investigating their past activities, as recommended by the Commission on the Truth, but it was as yet too early to say whether or not it would be possible to apply all the recommendations made by the latter Commission.

8. Thus, the process that had begun with the Peace Agreement was still continuing and many of the undertakings made in that context were being honoured. The process of compliance was a continuing one.

9. With respect to the administration of justice, which had been much criticized, he said that in June 1994, after the elections, all the judicial authorities would change and at that time the recommendations that had been made on that subject would be put into practice.

10. The Commission on the Truth, the Special Rapporteur of the Commission on Human Rights and the independent expert had all come to the conclusion that the death squads that had operated in El Salvador had been set up, financed and operated by civilians and not by the Government. They were, in fact, the product of a polarized society at war with itself, and had operated outside the control of the organs of the State. It was therefore incorrect to state, as Amnesty International had done that the death squads were the agents of government policy.

11. A question had been asked regarding the status in El Salvador of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. El Salvador was not a party to that Convention; its international obligations in that regard came under the inter-American system. It was currently studying the United Nations Convention with a view to possibly becoming a party to it.

12. On the question of political opponents of the Government, he said that freedom of expression was fully respected in El Salvador, and political opponents were no longer detained. Participation in society by the political left was fully guaranteed. Moreover, no detainees of any kind were held by the military; that was the responsibility of the Civilian Police, whose members were now chosen through a rigorous selection procedure in which ONUSAL was assisting and which ensured that no member of the security forces had been involved in abuses of human rights in the past.

13. Ms. VILLALTA (El Salvador), replying to questions concerning legal issues, said that the crimes regarded as being of international importance were defined in the Salvadorian Criminal Code as including genocide, public incitement to

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war of aggression, offences against the laws and customs of war, crimes against humanity, piracy, the slave trade and the trade in women and children.

14. The penalties imposed where a prisoner was kept in custody for longer than was permitted by law were also regulated in the Criminal Code, article 221 of which specified that deprivation of freedom for an illegal period was punishable. It was the duty of the Procurator for the Protection of Human Rights to ensure that the time-limits for the detention of persons were strictly respected.

15. Another question concerned the new office set up by the Supreme Court of Justice, namely the Department of Detained Persons. It produced lists of all arrests made in El Salvador, which were recorded in a publicly available document.

16. The death penalty for civilians had been abolished since December 1993, when the present Constitution entered into force. Article 27 of the Constitution imposed the death penalty only for military crimes under military laws or for high treason under the Military Code of Justice. The death penalty had been abolished for civilians because it was not considered to be a deterrent to criminals and because, if it were imposed, possible miscarriages of justice could not later be corrected. There was an inadvertent error in the report submitted by El Salvador: a table in paragraph 122 appeared to be referring to the death penalty but was in fact referring to commuted sentences.

17. In reply to the question why different categories of offenders were kept separate in Salvadorian prisons, she explained that it was undesirable to put all accused or condemned persons together because some detainees, in particular those who had been arrested for non-violent crimes, might be at risk from violent criminals. For example, it was desirable to keep those who had been arrested for traffic offences separate from those accused of crimes of violence such as murder. Such separation was necessary to prevent prison uprisings, of which there had been two instances recently in which a number of prisoners had been killed.

18. Mr. BRUNI CELLI asked about the statement by Mr. Melendez that the armed forces now accepted that they were subordinate to the civilian authorities. He wondered whether that meant that previously, that had not been the case. That would create a very serious problem, with a civilian Head of State recognized by the international community and a parallel military power that did not recognize any allegiance to the Head of State.

19. That situation had to be seen in the context of another statement that had been made, namely that the death squads were civilian and were beyond the control of the Government. The two statements, taken together, raised in a new light the entire problem of responsibility for the atrocities that had been committed.

20. Unless more details were provided there was a risk that the Committee would ultimately be unable to determine where the ultimate responsibility lay and he asked Mr. Melendez to provide further information.

21. Mr. LALLAH said that it seemed that there was confusion concerning paragraph 122 of the report. Notwithstanding the statement that the death penalty had been abolished, he wondered whether it was still the case that military personnel were subject to the death penalty in time of war, either civil or with a foreign Power, and if that were the case how many times the penalty had been applied.

22. Mr. AGUILAR noted that under army regulations soldiers were obliged to obey the orders of a superior under any circumstances, in accordance with the concept of "due obedience". The circumstances seemed to extend to human rights violations and to breaches of the Constitution, a situation which was clearly at variance with international practice. He wished to know whether the relevant regulations were still in force.

23. Mr. MELENDEZ (El Salvador) said that for much of the twentieth century the society and Government of El Salvador had been dominated by the military, a situation which had begun to change with the protests of 1979, which had culminated in the peace process. Since that change the military had been subordinated to civilian authority, and the regulations referred to by Mr. Aguilar had been amended. With regard to the death squads, he drew the Committee's attention to the comments of the Commission on the Truth, which had dealt with the matter in some detail. The answer to the question of whether the death squads had links to other elements in El Salvador depended upon what ideological stance was taken. The Committee would appreciate that it was not uncommon in Latin American societies for certain elements to escape government control. There was, however, no doubt that Salvadorian society had made much progress, with the involvement of every sector, since the end of the war. With reference to paragraph 122, he reiterated that the statistics did not relate to the death penalty. The statistical table had been presented erroneously.

24. Ms. VILLALTA (El Salvador) said that the only circumstance in which the death penalty could be applied was in the event of international war, as provided for under article 27 of the Constitution. Under the Penal Code the defence of obeying a superior could not be advanced where an act was punishable.

25. Mrs. CHANET said that the real issue with respect to the obeying of orders by subordinates was whether article 173 of the army regulations had been repealed, as called for by the Commission on the Truth.

26. Mr. MELENDEZ (El Salvador) said that it was his understanding that the relevant regulations had been amended. He would provide the Committee with exact information at a later stage.

27. The CHAIRMAN said that the delegation of El Salvador would proceed to answer questions held over from section IV of the list of issues.

28. Ms. VILLALTA (El Salvador) said that, as a result of assimilation, there were few members of indigenous minorities in the country. The rights of indigenous groups were, however, fully protected under the Constitution, and positive efforts were made to promote indigenous culture and the use of indigenous languages. Appropriate organizations had been established to that end. Indigenous groups were represented in the Parliament and Administration;

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all Salvadorian citizens enjoyed the right to vote and to elect the candidate of their choice and to seek political office, and those rights were fully protected under various articles of the Constitution.

Right to a fair trial (art. 14 of the Covenant) (sect. III of the list of issues)

29. The CHAIRMAN read out section III of the list of issues to be taken up in connection with the second periodic report of El Salvador, namely:

(a) clarification of the respective roles, in responding to human rights violations, of regular courts, the Presidential Commissioner for Human Rights, the Procurator for the Protection of Human Rights and the various human rights bodies set up by the Supreme Court of Justice, the Legislative Assembly and the armed forces in responding to human rights violations; (b) an indication of whether confessions or testimony obtained under duress could be used in court proceedings; (c) detailed information on the application in practice of the legal provisions relating to political crimes, on the safeguards and effective remedies available to persons suspected of having committed such crimes and on the number of political prisoners; (d) information on the organization and functioning of the Bar in El Salvador; and (e) information on measures taken to address the problems resulting from the backlog in the judiciary and on whether the adoption of Decision No. 434 had led to any progress.

30. Ms. VILLALTA (El Salvador), commenting on paragraph III (a) of the list of issues, said that the role of the Presidential Commissioner for Human Rights was to monitor human rights and to ensure the effective application of legal remedies in the event of violations. The Office of the Procurator for the Protection of Human Rights had similar responsibilities, including with respect to administrative decisions. Both organs had been established under the peace process.

31. The primordial role in the judicial protection of human rights lay with the Constitutional Division of the Supreme Court of Justice, particularly with regard to actions for amparo and habeas corpus in the event of violation of constitutional rights. The Criminal Division organized training for judges to familiarize them with human rights provisions, in particular the commitments entered into by El Salvador under international instruments, which took precedence over secondary domestic legislation. The Legislative Assembly had established a Justice and Human Rights Commission with far-reaching powers, including, in accordance with article 131 of the Constitution, that of recommending dismissal of the Chiefs of Security and Intelligence in the event of human rights violations. Also in connection with paragraph III (a), training programmes on the protection of human rights had been introduced at all levels of the armed forces.

32. With respect to paragraph III (b), testimony obtained under duress was not legally valid, and, under article 12 of the Constitution, those responsible for eliciting such testimony were liable to criminal sanctions.

33. The concept of political crime and the classification of crimes recognized as such were to be found in article 151 of the Penal Code. Such crimes essentially related to acts intended to overthrow or subvert the institution of the State or threaten the nation or its territorial integrity. The main

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safeguard was the constitutional provision for amnesty, granted by the Legislative Assembly, for political crimes or common crimes committed in connection with a political act. Such common crimes would include, for example, wire-tapping in connection with a seditious act. Since the amnesty of March 1993, no political prisoners had been incarcerated in the country.

34. Turning to question III (d), she said that authorization to practise law in El Salvador was granted by the courts to persons who had obtained a degree in law from a university and had demonstrated their proficiency in the subject. Membership in a bar association was not obligatory, although associations of lawyers did exist in the country.

35. Referring to question III (e), she said that progress had in fact been made as a result of the adoption of Decision No. 434. Measures had been taken to provide a larger budget for the judiciary, and more courts had been created, including family courts and a number of itinerant courts to help deal with case overloads. An auditing and monitoring department had also been set up to supervise the allocation of cases to the courts, and the working hours of the courts had been increased. A law had also been passed recently regulating judicial procedures and establishing penalties for the violation of proper procedures.

36. Mr. NDIAYE associated himself with the views expressed on section I by Mr. Aguilar and Mrs. Chanet. In connection with section IV, he asked how the prohibition referred to in paragraph 225 of the second periodic report was in fact applied. Referring to paragraph 239 of the report, he said it seemed to him that the statement that the principle of the equality of children was not fully respected was too severe, as it was difficult to see how preference could fail to be given to legitimate children in cases of intestacy. Similarly, in paragraph 238 of the report, he failed to see how the provisions cited constituted an inequality. In connection with the right to vote, he asked for more information on how the provisions on political rights and duties referred to in paragraphs 265-269 were implemented in practice, and commented that the provisions concerning the financing of elections seemed likely to lead to over-subsidization of the majority party.

37. Mr. HERNDL noted that the second periodic report provided more information on ethnic minorities and the indigenous population than the first report had; he would, however, welcome more specific information on what proportion of the population was made up of indigenous peoples or spoke non-Spanish languages. Protection of the identity of indigenous groups involved more than preserving and respecting indigenous languages; it included positive measures to protect their identity. He hoped that in its next report El Salvador could provide some specific figures with regard to its ethnic minorities.

38. Mr. AGUILAR noted that only two paragraphs of the periodic report were devoted to article 14 of the Covenant; that seemed very little in the light of the criticisms of El Salvador's judicial system made by the Committee. He hoped that more information on the subject would be included in the next report.

39. In connection with article 17 of the Covenant, he asked for more information regarding the prohibition of public performances in private places and on how those terms were defined. The censorship described in paragraph 220

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of the report seemed very far-reaching, as it extended to "the ethical and aesthetic aspects of every artistic work". He asked for more information on what criteria were used for the "evaluation" of such works by the authorities and on what basis the distinction between obscenity and vulgarity was made. He also asked for information on what books, articles and public performances had been prohibited in El Salvador over the last 10 years.

40. In connection with article 19 of the Covenant, he noted that there had been instances of death threats and incitement to violence against certain groups being published in some newspapers or broadcast on television, and asked whether article 406 of the Penal Code had been applied to any such cases and whether anyone had been brought to trial or punished for such acts.

41. Referring to paragraph 237 of the report, he said that the situation referred to seemed to him a clear case of inequality. The same was true with regard to the different criteria for divorce established for men and women, as reported in paragraph 238.

42. Mrs. HIGGINS asked for further clarification of the concept of "political crime" embodied in Salvadorian legislation. In particular, she wondered why such a special category of crimes was needed, and why some actions such as "advocating anarchy" had been included in it. It seemed that actions might have been included in the list in order to make it possible to extend amnesty to them; it was unclear, however, how such classification affected the availability of such normal recourses as amparo and habeas corpus or the question of extraditability, in particular with respect to the crime of terrorism. She would also like more information with regard to the significance of paragraphs 175 (b) and 175 (c) of the report.

43. Mrs. CHANET said that she had some difficulty with the concept of political crimes, and would like to hear more information on the subjective criteria mentioned in paragraph 173 and how the political motivation of an action was established. The parameters of the concept seemed quite broad, extending as far as misappropriation of public funds, which ordinarily would be considered an aggravating circumstance, and should be clarified. If a political motivation was expressed for the misappropriation of funds, for example, under the Amnesty Law the perpetrator could be granted amnesty and guaranteed impunity. The delegation had stated that the regime for political offenders was protective rather than punitive. She found it difficult, however, to reconcile the description of it contained in paragraph 175 with a protective approach.

44. Mrs. EVATT said that lack of confidence in the judiciary appeared to be widespread, largely because it was viewed as being open to political pressure. Reports had been received that judges attempting to perform their duties conscientiously had suffered threats and intimidation. She wondered if the Government was considering taking further action to distance the judiciary from politics. For example, the Supreme Court had power to rule on constitutional questions, but it also appeared to be deeply involved in the electoral process. The judges who were members of the Supreme Electoral Tribunal represented political parties, according to paragraph 276 of the report. She joined Mr. Aguilar in requesting more information on article 14 of the Covenant.

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45. With regard to the right of privacy, she would be interested to learn who had authority to order searches and seizures, how they were conducted and whether individuals had any recourse or could challenge such orders. She also wondered whether any protections for trade union officials existed and why directors of unions must be Salvadorian by birth. The numbers of members required to form a political party, mentioned in paragraph 272, seemed excessive. She also inquired whether an individual who was not a member of a registered political party could stand for election.

46. Mr. POGAR associated himself with previous questions on the judicial system, and asked whether the bill on extrajudicial confessions which the Government had submitted to the Legislative Assembly had been approved, and if so, what measures had been taken in that area.

47. Regarding article 18 of the Covenant guaranteeing freedom of religion, the legal personality of churches was established in article 26 of the Constitution, and the Roman Catholic Church was recognized. He would welcome more information on the conditions under law for the recognition of the legal personality of other religious groups. More information was also needed on conscientious objection to military service. He understood that it was not recognized in El Salvador. With reference to the Committee's general comment on article 18, he wondered if the reform of the military included any initiatives to change that stance. Regarding freedom of association, article 47 of the Constitution limited the right to form trade associations to private and independent enterprises, but he would be interested to know the reasons for limiting that right for public workers. Concerning the electoral process, the Special Rapporteur of the Commission on Human Rights had reported that refugees and displaced persons had faced problems in receiving personal identity certificates, and he wondered whether those difficulties had been overcome before the election.

48. Mr. WENNERGREN said that he would like to learn more about the administrative jurisdiction remedies mentioned in paragraph 53. He wondered what type of cases they dealt with and how many were considered per year.

49. He asked whether the itinerant courts set up to assist with the backlog of cases were also ordinary courts which were a constituent part of the judiciary system, or whether they were ad hoc courts established as needed. If the latter was true, he saw a difficulty in that they could not be considered fully independent. It should also be clarified whether the itinerant courts were single-judge courts, like the courts of first instance.

50. Mr. BAN said that he associated himself with the concerns expressed by Mr. Aguilar and Mr. Ndiaye on the censorship of public performances, and that he was unable to understand why prior censorship was needed, when serious penalties were available to the authorities to sanction such offences. He had found little information in the report on the system for operating radio and television stations, and was eager to know more about licensing requirements and whether private individuals or enterprises could establish and operate stations. He wondered whether newspapers and periodicals from neighbouring Spanish-speaking countries could be imported into El Salvador and whether radio and television broadcasts from other countries were controlled.

51. Mr. DIMITRIJEVIC said that he remained puzzled by the discussion of political crime. He had the impression that it was the elaboration of an idea, prevalent in Europe during the nineteenth century, that offenders who had been motivated by their beliefs should be treated with some respect. The examples given were confusing, however, since amnesty and pardon were not remedies under the Covenant. He asked for further clarification of the differences in the prison regime for political and other offenders in El Salvador.

52. More information on the position of non-governmental organizations and whether they could institute proceedings actio popularis or amicus curiae would be helpful.

53. Regarding freedom of expression and conscience, it was important to know whether blasphemy was still a criminal offence. With regard to article 19 of the Covenant and the active right to know which it guaranteed, he wondered if citizens had access to files concerning the events of the recent past.

54. Turning to freedom of association, he noted the statement in paragraph 225 of the report that armed groups of a political, religious or corporate character were not permitted, and wondered if certain associations were listed in police or other registries as subversive, and whether the treatment of an individual arrested would be affected by membership in such a group.

The meeting rose at 1 p.m.